APPENDIX I

SUPREME COURT OF FLORIDA

January Term, A.D. 1974
Wednesday, April 17, 1974

Case No. 44,993

District Court of Appeal, Fourth District

72-1159

MAILMAN DEVELOPMENT CORPORATION
and GAC CORPORATION,
Petitioners,

vs.

CITY OF HOLLYWOOD,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.
ADKINS, C. J., ROBERTS, ERVIN, BOYD and McCAIN, JJ., concur

APPENDIX II

In the District Court of Appeal of the State of Florida

Fourth District

July Term 1973

Case No. 72-1159

MAILMAN DEVELOPMENT CORPORATION and GAC CORPORATION,

Appellants,

v.

CITY OF HOLLYWOOD,

Appellee.

Opinion filed November 23, 1973.

Interlocutory Appeal from the Circuit Court for Broward County; Otis Farrington, Judge.

John R. Lawson, Jr., Hume F. Coleman, W. Daniel Stephens, of Holland & Knight, Tampa, and Abrams Robbins Resnick & Schneider, Hollywood, for appellants.

Myron H. Burnstein, Special Attorney, and B. L. David, City Attorney, Hollywood, for appellee.

OWEN, C. J.

By its seven-count amended complaint, appellant sought declaratory judgment, injunction and other relief. This interlocutory appeal was taken from an order dismissing three of the counts without leave to amend.

In 1969, appellant purchased approximately 900 acres of land, 200 acres of which were within the corporate limits of the appellee—City of Hollywood. Appellant planned a development consisting of multiple dwelling units, a shopping center, a hotel, and certain recreational facilities. At that time and by ordinance

subsequently adopted in 1970, the property within the corporate limits of the City of Hollywood was zoned so as to permit 60 dwelling units per acre on a portion thereof and 80 dwelling units per acre on other portions. On March 1, 1972, appellee adopted a new zoning ordinance limiting density to 25 dwelling units per acre. This suit was to secure relief from the new ordinance.

Amended Count II alleged that the new ordinance was illegal and void because there had been no changes in the circumstances relating to the zoning needs of the appellee-City between the time of the passage of the earlier ordinances and the passage of the new ordinance. A change of circumstances is not a prerequisite to the validity of an amendment to a zoning ordinance. Oka v. Cole, Fla. 1962, 145 So.2d 233; Chadwick v. Layton, Fla. App. 1963, 150 So.2d 485. Appellant's reliance upon Wager v. City of Green Cove Springs, Fla. 1972, 261 So.2d 827, is misplaced.

Amended Count V alleged that as a result of the adoption of the new ordinance, appellee-City had in effect taken appellant's property without just compensation thereby entitling appellant to a jury trial to determine its compensation. Under our present constitution, Article X, Section 6, no private property shall be taken except for public purposes and with full compensation to the owner. But there is a clear distinction between the appropriation of private property for public use in the exercise of the power of eminent domain, and the regulation of the use of property under the police power exercised to promote the health, morals and safety of the community. State Plant Board v. Smith, Fla. 1959, 110 So.2d 401. See also, 1 Nichols on Eminent Domain (3rd Ed.) pp. 69-70, Section 14.2(2). We hold that enactment of a zoning ordinance under the exercise of police power does not entitle the property owner to seek compensation for the taking of the property through inverse condemnation. Cf., City of Miami v. Romer, Fla. 1952, 58 So.2d 849. If the zoning ordinance as applied to the property involved is arbitrary, unreasonable, dis-

criminatory or confiscatory (as appellant has alleged in other counts still pending before the trial court), the relief available to the property owner is a judicial determination that the ordinance is either invalid, or unenforceable as pertains to plaintiff's property.

Count VII of the amended complaint alleged that the new ordinance was illegal and void because the City Commission failed to give reasonable consideration to the matters prescribed in Section 176.04, F.S. 1971, for the reason that the commission members (because of political obligations having nothing to do with zoning considerations) acted contrary to their convictions and good judgment. The motives of a legislative body in adopting an ordinance, legislative in character, are not the proper subject of judicial inquiry. City of Miami Beach v. Schauer, Fla. App. 1958, 104 So.2d 129 (cert. disch. Fla. 1959, 112 So.2d 838); Board of Commissioners of State Institutions v. Tallahassee Bank and Trust Company, Fla. App. 1958, 108 So.2d 74; Housing Auth. of City of Melbourne v. Richardson, Fla. App. 1967, 196 So.2d 489.

The court did not err in dismissing Counts II, V and VII of the amended complaint, without leave to amend. The order is affirmed.

AFFIRMED.

WALDEN AND CROSS, JJ., concur.

APPENDIX III

In the Circuit Court of the Seventeenth Judicial Circuit of Florida, In and For Broward County.

Case No. 72-4252

MAILMAN DEVELOPMENT CORPORATION and GAC CORPORATION,

Plaintiff,

vs.

CITY OF HOLLYWOOD,

Defendant.

AMENDED COMPLAINT

Plaintiff, MAILMAN DEVELOPMENT CORPORATION and GAC CORPORATION, sue Defendant, CITY OF HOLLYWOOD, for declaratory judgment, injunction and other relief:

1. Plaintiff, MAILMAN DEVELOPMENT CORPORATION (hereinafter referred to as "Plaintiff"), is a corporation organized and existing under the laws of the State of Florida, and has its principal place of business in Hollywood, Broward County, Florida.

2. Defendant, CITY OF HOLLYWOOD (hereinafter referred to as "Defendant"), is a municipal corporation, organized and existing under the laws of the State of Florida, located in Broward County, Florida.

3. GAC CORPORATION (hereinafter referred to as "GAC"), is a Pennsylvania corporation authorized to do business in the State of Florida. Plaintiff is a wholly owned subsidiary of GAC. Plaintiff and GAC were and are engaged in the business of acquiring property for development and construction.

4. In early 1969, GAC was shown certain property (hereinafter referred to as the "Property") consisting

of several parcels of real estate in Broward County, Florida, totaling approximately 900 acres.

5. The Property was offered to GAC by the then owners, as one complete real estate package which could be planned and constructed as a single development (hereinafter referred to as the "Project") consisting of:

(a) 18,000 multiple dwelling units and a 40 acre shopping center on the portion of the Property lying immediately west of and adjoining the Intracoastal Waterway (hereinafter referred to as the "Mailman Tract") consisting of over 400 acres described in parcel 1 of Exhibit "A" and Exhibit "B";

(b) multi-family dwelling units, a hotel, a beach and other recreational facilities on the portion of the Property adjoining the Atlantic Ocean (hereinafter referred to as the "Beach Tract") and described in parcel 3 of Exhibit "A"; and

(c) additional facilities on a third parcel.

6. The Property was only offered for sale as a unit because the highest and best use of the Property was and is the Project.

7. GAC purchased options on the Property subject to the then owners accomplishing all the prerequisites necessary for the Project.

8. The prerequisites for the Project were quieting title to a portion of the Property, obtaining agreements with the City of Hallandale, Broward County, Florida, certain neighboring landowners and Defendant concerning bridges, waterways and similar matters and obtaining appropriate zoning, all of which was essential to the Project.

9. Plaintiff purchased the Property as a unit at a cost exceeding $37,650,000 in order to complete the Project at the highest and best use of each parcel of the Property; and the prerequisites for the Project were successfully concluded.

10. Zoning needed for the Project included the uses allowed in Multiple Dwelling District RC-22 for the bulk of the Mailman Tract located in the City of Hollywood, which uses were authorized by Ordinance 0-69-166 of Defendant (attached as Exhibit "C"); and, the uses allowed in Multiple Dwelling Districts RC-46, RC-47, RC-50 and RC-51 for the Beach Tract and Additional Beach Tract in the City of Hollywood, which zoning uses were already in effect when these beach tracts were acquired by Plaintiff.

11. After all of this was done, Plaintiff then commenced the Project by procuring building permits; building streets and a bridge; commencing construction of utilities; constructing buildings; buying land to the north of the Mailman Tract so the Defendant could widen a right-of-way; dredging, filling and bulkheading; agreeing to build and maintain bridges and streets; posting a bond with the City of Hallandale for the completion of the streets, as planned; hiring architects and engineers to prepare plans and specifications; complying with requests by Defendant regarding construction of the Project; purchasing oceanfront land (hereinafter referred to as "Additional Beach Tract") described in Exhibit "G"; and paying interest and taxes.

12. All of the items in Paragraph 11 exceeded $24,600,000 in cost. All of these expenditures were made in reliance upon the zoning provided by the RC-22, RC-46, RC-47, RC-50 and RC-51 Districts. None of this would have been necessary and most of it is of no value if the Property and the Additional Beach Tract cannot be incorporated into the Project as the Original Ordinances (as hereinafter defined) allowed. Irreparable harm has and will result to Plaintiff if construction of the Project is not allowed as provided by the Original Ordinances (as hereinafter defined).

13. Subsequent to Plaintiff's purchase of the Property density was limited to 60 dwelling units per acre for the RC-22 District or the Mailman Tract and 80

dwelling units per acre for the RC-46, RC-47, RC-50 and RC-51 Districts on the beach by Ordinance 0-70-69 of Defendant (attached as Exhibit "D"). (This ordinance and 0-69-166 are hereinafter collectively referred to as the "Original Ordinances".). These densities were compatible with the Project. The Original Ordinances were enacted after extensive hearings and studies by the appropriate zoning boards and commissions of Defendant.

14. On March 1, 1972, Defendant through its City Commission, without providing notice and full and impartial hearings as provided by law, adopted zoning ordinance 0-72-26 (hereinafter referred to as the "New Ordinance") attached hereto as Exhibit "H".

15. The New Ordinance prohibits the Project because the Property and Additional Beach Tract were purchased and improvements completed on the basis Plaintiff would be allowed to construct not less than 18,000 dwelling units on the Property, or 60 dwelling units per acre in the Mailman Tract in the City of Hollywood and 80 dwelling units per acre on the Beach Tract and Additional Beach Tract zoned for multiple-family dwellings; but the New Ordinance prohibits construction in excess of 25 dwelling units on the land in the City of Hollywood zoned for Multiple Dwelling Districts. Since approximately 200 acres of the Property and Additional Beach Tract lies in the City of Hollywood, the entire Project is effectively destroyed as a result of the New Ordinance.

16. Plaintiff incorporates by reference all of the foregoing paragraphs into each of the following counts:

COUNT I

The Property and the Additional Beach Tract are not zoned in a fashion consistent with that of properties surrounding them because the properties surrounding

them are allowed a higher density than that permitted the Plaintiff by the New Ordinance. The New Ordinance is, therefore, an unconstitutional deprivation of Plaintiff's property rights without due process and equal protection of the law since it goes beyond the valid realm of regulation necessary for the public welfare, and consequently operates as an unlawful taking and confiscation of Plaintiff's property without compensation.

COUNT II

There were no changes in the circumstances relating to the zoning needs of the Defendant in the area of the Property and Additional Beach Tract between (a) the time of the passage of the Original Ordinances, the acquisition of the Property and commencement of the Project, on the one hand, and (b) the passage of the New Ordinance, on the other hand. The New Ordinance is therefore, an illegal and void rezoning to the detriment of the Plaintiff without any substantial change in the circumstances.

COUNT III

Relying on the zoning provided by the Original Ordinances, the Plaintiff purchased the Property and the Additional Beach Tract at great cost and expended considerable sums on planning, financing and constructing improvements and structures which would be fully used and useful only if the Project could be achieved. The New Ordinance would prevent completion of the Project and thus would result in a forfeiture of Plaintiff's investment. The New Ordinance is, therefore, illegal and void as applied to the property of Plaintiff and, consequently, Defendant is estopped from enforcing the New Ordinance against the Plaintiff.

COUNT IV

The New Ordinance was not passed in accordance with the law providing for notice because (a) the title as noticed and read was defective and (b) fair and impartial hearings on the proposed ordinance were not possible since the Commissioners had prejudged the

New Ordinance on criteria unrelated to zoning. The New Ordinance deprives the Plaintiff of property rights with due process of the equal protection of the law and is illegal and void.

COUNT V

As a direct and proximate result of the adoption by Defendant of the New Ordinance and the attendant (a) frustration of the Project, (b) deprivation of the reasonable use of the Plaintiff's property and (c) now fruitless expenditure on improvements, Defendant has exercised control over, appropriated, confiscated and condemned Plaintiff's property without just compensation and without due process of law contrary to the constitution and laws of the United States of America and the State of Florida and the Plaintiff is entitled to have a jury trial to determine its compensation.

COUNT VI

In the City of Hollywood different density limitations are needed for each of the various Multiple-Family Dwelling Districts because the Districts are very diverse in character, uniqueness, uses and needs depending upon where they are located in the City. Yet, the New Ordinance gives no consideration to nor makes any allowance for these differences, but instead, sets a single uniform density standard in Multiple-Family Dwelling Districts throughout the City of Hollywood. The New Ordinance is, therefore, on its face and as applied to the Property and Additional Beach Tract, arbitrary, unreasonable, discriminatory and confiscatory, and has no substantial relation to public health, safety, morals or general welfare.

WHEREFORE, Plaintiff asks the Court for some or all of the following relief:

A. Enjoin the City of Hollywood from attempting to enforce the New Ordinance against Plaintiff, after,

1. Declaring the New Ordinance unconstitutional on its face and, therefore, void and of no effect; or,

2. Declaring the New Ordinance unconstitutional as applied to Plaintiff's property, and, therefore, void and of no effect as to Plaintiff's property; or,

3. Declaring rezoning by the New Ordinance void and of no effect because there was no substantial change in circumstances; or,

4. Declaring the City of Hollywood is estopped to enforce the New Zoning Ordinance as to Plaintiff; or,

5. Declaring the New Ordinance void and of no effect because it was not adopted according to law.

B. In the alternative, declare Defendant has condemned Plaintiff's property by exercise of its right of eminent domain and that after a jury trial Plaintiff must be compensated by Defendant for the loss of its property, including costs and attorneys' fees.

C. Grant such other and further relief as the Court may deem equitable and just, including a judgment against Defendant for costs of this action.

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and

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By _____
D. Burke Kibler, III

By _____
John R. Lawson, Jr.

By _____
Hume F. Coleman

In the Circuit Court of the Seventeenth Judicial Circuit,
In and For Broward County, Florida

MAILMAN DEVELOPMENT CORPORATION
and GAC CORPORATION,

Plaintiffs

vs.

CITY OF HOLLYWOOD,

Defendant

Case No. 72-4252

Farrington

FIRST AMENDMENT TO AMENDED COMPLAINT

The Plaintiffs amend their Amended Complaint by substituting the following Amended Counts for the correspondingly numbered counts in the Amended Complaint and adding a New Count VII, immediately following Count VI in the Complaint:

AMENDED COUNT II

Since the time of the passage of Ordinance 0-70-69, on the one hand, and the passage of the New Ordinance, on the other hand, there have been no substantial changes in the circumstances relating to the density needs of the Defendant in the area of the Property and Additional Beach Tract which would be sufficient to support the density imposed by the New Ordinance in place of the density imposed by Ordinance 0-70-69. The New Ordinance is, therefore, an illegal and void rezoning to the detriment of the Plaintiff in the face of res judicata on the density needs of Defendant.

AMENDED COUNT IV

The New Ordinance was not passed in accordance with the law providing for notice because the title as noticed and read was defective. The New Ordinance, therefore, deprives the Plaintiff of property rights without due process or the equal protection of the law and is illegal and void.

AMENDED COUNT V

As a direct and proximate result of the adoption by Defendant of the New Ordinance and the attendant frustration of the Project, the Plaintiff was deprived (a) of the reasonable use of the Property out of all proportion in relation to any value to the Defendant from density limits and (b) of substantially all the value of previous expenditure for acquisition of and improvements on the Property, consequently, Defendant has exercised control over, appropriated, confiscated and condemned Plaintiff's property without just compensation and without due process of law contrary to the Constitution and laws of the United States of America and the State of Florida and the Plaintiff is entitled to have a jury trial to determine its compensation.

NEW COUNT VII

In enacting the New Ordinance the City Commission failed to give reasonable consideration to the matters prescribed in Section 176.04, Florida Statutes, 1971, for the reason that the Commission members because of political obligations having nothing to do with zoning considerations acted contrary to their convictions and good judgment. The New Ordinance therefore is invalid in the absence of such reasonable consideration because it was enacted without compliance with the statute authorizing zoning.

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Attorneys for Plaintiff

By: John R. Lawson, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a copy of the foregoing First Amendment to Amended Complaint to Myron H. Burnstein, Special Attorney, 1720 Harrison Street, Hollywood, Florida and B. L. David, City Attorney, City of Hollywood, City Hall, Hollywood, Florida on this 18th day of August, 1972 by U. S. Mail prepaid.

John R. Lawson, Jr.

APPENDIX IV

In the Circuit Court of the Seventeenth Judicial Circuit,
In and For Broward County, Florida

MAILMAN DEVELOPMENT CORPORATION
and GAC CORPORATION,

Plaintiffs

vs.

CITY OF HOLLYWOOD,

Defendant

No. 72-4252

Farrington

**ORDER OF DISMISSAL
AS TO
COUNTS II, IV, V & VII**

This cause having come on to be heard on Defendant's Motion to Dismiss the First Amendment to the Amended Complaint; and the Court having heard argument of counsel and being fully advised in the premises, it is thereupon,

ORDERED AND ADJUDGED:

That Defendant's Motion to Dismiss Amended Count II, Amended Count IV, Amended Count V and New Count VII, be and the same is hereby granted.

Twenty (20) days leave is granted to Plaintiffs to amend Amended Count IV; Amended Counts II, V and New Count VII are dismissed WITHOUT LEAVE TO AMEND.

DONE AND ORDERED in Chambers in the Broward County Courthouse, Broward County, Fort Lauderdale, Florida, this 3 day of November, 1972.

OTIS FARRINGTON
Circuit Judge

APPENDIX 4

Copies Furnished To:
Holland & Knight
Salter, Yeslow & Burnstein
B. L. David, Esquire

APPENDIX V

In the Circuit Court of the Seventeenth Judicial Circuit of Florida, In and For Broward County

MAILMAN DEVELOPMENT CORPORATION and GAC CORPORATION,

Plaintiffs

vs.

CITY OF HOLLYWOOD,

Defendant

Case No. 72-4252

Farrington

AMENDED ASSIGNMENTS OF ERROR

Plaintiffs-Appellants, MAInMAN DEVELOPMENT CORPORATION and GAC CORPORATION, through their undersigned attorneys, assign and designate as error the following judicial acts in the lower court:

* * *

2. The Court erred in granting Defendant's Motion to Dismiss Amended Count V.

* * *

5. The Court erred in dismissing Amended Count V.

* * *